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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D7

DATE: **OCT 19 2011** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a New York corporation engaged in the import and wholesale of musical instruments. It claims to be a subsidiary of [REDACTED], located in Tianjin, China. The petitioner seeks to employ the beneficiary as its vice president for a period of two years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director erred by basing his determination on "a narrow definition" when determining the number of employees working for the U.S. company, and failed to take into account the petitioner's use of commissioned and contracted personnel. Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 19, 2009. The petitioner stated on Form I-129 that the U.S. company was established in 2002 to engage in the import and wholesale of musical instruments. The petitioner claimed four employees and gross annual income of \$1.85 million.

In a letter dated May 13, 2009, the petitioner explained that, while the U.S. company was established in 2002, all of its stock was recently acquired by the beneficiary's foreign employer in China in exchange for a contribution of \$130,000. The petitioner stated that the company is fully operational and has obtained a market share for its [REDACTED] line of musical instruments.

The petitioner described the beneficiary's proposed duties as vice president as follows:

- Directing in planning, developing and establishing marketing strategies, policies and objectives for the U.S. entity in accordance with the Parent Company's directives and corporate charter;
- Monitoring the progress of the sales activities in the United States;
- Establishing sales networks in the United States, and oversee sales agreement execution and policy implementation; and
- Reviewing marketing segments to determine progress and status in attaining objectives and revising objectives and plans in accordance with current marketing conditions.

The petitioner stated that the U.S. company has four employees and several sales agents, and noted that the beneficiary will be authorized to assist the company president to recruit additional local employees and agents upon assuming his position.

The director issued a request for additional evidence ("RFE") on May 28, 2009. The director instructed the petitioner to submit, *inter alia*, the following: (1) a comprehensive description of the beneficiary's duties; (2) a list of the U.S. company's employees, including their names, position titles and complete position descriptions and a position breakdown for all staff; (3) copies of the U.S. company's IRS Forms 941, Employer's Quarterly Federal Tax Return, for 2008 and the first quarter of 2009; and (4) copies of all IRS Forms W-2, W-3, 1096 and 1099 issued by the U.S. company in 2008.

In response, the petitioner submitted the following position description for the beneficiary:

- Help directing in planning, developing and establishing marketing strategies, policies and objectives for the U.S. entity in accordance with the Parent Company's directives and corporate charter;
- Monitoring the progress of the sales and purchase projects in the United States;
- Help establish sales networks in the United States, and oversee sales agreement execution and policy implementation;
- Supervise subordinate supervisors; and

- Review marketing statements to determine progress and status in attaining objectives and revising objectives and plans in accordance with current marketing conditions.

As vice president, [the beneficiary] will devote 37 hours per week to the above identified managerial duties and 3 hours per week to non-managerial duties within the first year of [the petitioner's] operation. He is expected to be relieved of day-to-day managerial duties from the beginning of the second year of his appointment at [the petitioning company].

The petitioner submitted an organizational chart for the U.S. company identifying seven employees (including the beneficiary) and four sales agents. According to the information provided, the beneficiary would supervise the Director of Sales Department and the Director of Shipping & Handling Department. The chart shows that the shipping and handling department director supervises a storage manager, while the sales department director oversees a marketing coordinator, a sales assistant/secretary, and four sales agents (two individuals and two companies).

The petitioner also provided the requested position descriptions for the company's employees. The petitioner indicated that the director of the sales department allocates his time as follows: 30 hours to managing sales activities in the U.S. market; 2.5 hours to developing marketing strategies; 3.5 hours to establishing a sales network; 3.5 hours to monitoring marketing conditions and implementing sales policies to maximize market shares and profits; and 0.5 hours to initiating personnel actions within the sales department.

The petitioner stated that the director of shipping and handling spends 35 hours per week managing shipping and handling operations, 3 hours per week reporting progress to his supervisor; and two hours per week making procedural and policy recommendations to improve department performance.

The marketing coordinator is responsible for coordinating marketing and promotional activities in the United States (35 hours per week), and monitoring marketing conditions and customer/client responses to products, pricing and service (5 hours per week). The storage manager "oversees the overall activities relating to the storage of goods/merchandise" and "makes procedural and policy recommendations" to improve the performance of the storage facility.

Finally, the petitioner indicated that the sales assistant/secretary assists in the administration of the sales department, and provides general office services, while the sales agents are "engaged in sales of the company's products in the United States market." The petitioner indicated that the positions of market coordinator, sales assistant and director of sales department require a bachelor's degree.

The petitioner submitted the requested copies of its IRS Forms 941, Employer's Quarterly Wage Report, for 2008 and the first two quarters of 2009. The petitioner reported three employees and total quarterly wages of approximately [REDACTED] in both quarters of 2009. In 2008, the petitioner reported between 2 and 6 employees in each quarter and paid quarterly wages between [REDACTED]. The petitioner submitted copies of six Forms W-2 issued in 2008, including Forms W-2 for the individuals identified as the company president,

the director of shipping and handling, and the market coordinator. The three remaining W-2 employees are not listed on the petitioner's organizational chart or employee list.

The petitioner also submitted copies of three IRS Forms 1099, Miscellaneous Income, issued by the company in 2008. The petitioner issued IRS Forms 1099 to two of the four sales agents listed on the organizational chart. The petitioner also issued a Form 1099 to [REDACTED] who may be "[REDACTED]" the individual identified as the petitioner's sales assistant and secretary.

The director denied the petition on July 14, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. In denying the petition, the director emphasized that the petitioner's latest quarterly tax returns indicate that the company has only three employees, and the evidence submitted failed to establish which employees were actually working for the company at the time the petition was filed. The director determined that the petitioner had not established that it has a reasonable need for the beneficiary to perform the stated duties on a full-time basis, and failed to establish that he would not be involved in the non-managerial, day-to-day operations of the business.

On appeal, counsel for the petitioner asserts that while the petitioner paid only three of its employees salaries and wages reported on Form 941 during the first six months of 2009, it also paid other workers and sales agents on a Form 1099 basis during that same period, and outsourced functions such as accounting, legal, customs and freight services. Counsel asserts that the petitioner has more than four workers and has a reasonable need for an executive to manage the business and its personnel. Counsel further contends that, as the foreign entity recently acquired ownership of the U.S. company, it has a reasonable need to transfer a qualified manager to the United States to implement its strategies and policies. Counsel states that the foreign entity plans to have the beneficiary undertake additional responsibilities over time and to eventually replace the current president of the U.S. company.

In support of the appeal, the petitioner submits an affidavit from [REDACTED] the U.S. company's current president. [REDACTED] asserts that it is the parent company's intention that the beneficiary will eventually replace him as the president of the company. He indicates that he is concerned that the parent company will close the subsidiary if the beneficiary is not able to undertake his position as vice president.

In addition, the petitioner provides copies of checks issued to the petitioner's personnel during the first two quarters of 2009. This evidence includes: (1) two checks for [REDACTED] issued to [REDACTED] for "January to March" and "April to June"; and (2) copies of commission checks issued to various companies and individuals.

Upon review, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive position.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.*

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44).

Although the beneficiary's job title is "vice president" the petitioner's description of his proposed job duties indicated that his responsibilities would be confined to sales and marketing operations, including establishing marketing policies and objectives, monitoring sales activities, establishing sales networks, overseeing sales agreement execution, and reviewing marketing statements. The petitioner's initial evidence, however, failed to establish who is responsible for performing non-qualifying duties associated with the company's sales and marketing functions, such that it could be determined that the beneficiary would be relieved from performing such duties. Moreover, the position description itself is brief and provides little detail regarding the specific tasks the beneficiary would perform to "monitor" sales activities or to "oversee sales agreement execution," such that it could be determined that such duties are managerial or executive in nature. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Accordingly, the director requested that the petitioner submit a comprehensive description of the beneficiary's duties, including an explanation as to how the duties will be managerial or executive in nature. In response to this request, the petitioner re-submitted essentially the same list of four duties provided at the time of filing, and added that the beneficiary would "supervise subordinate supervisors." The petitioner also specified that the beneficiary would devote 37 hours per week to the five listed duties. This additional information was barely responsive to the director's request and cannot be considered a "comprehensive description" of the beneficiary's proposed duties. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Overall, the beneficiary's position title and the brief job description provided are insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity. Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

logo on the instruments. At the time of filing the petition in May 2009, the petitioner claimed to have four employees and several sales agents. In July 2009, when responding to the director's RFE, the petitioner claimed to have six employees and several sales agents.

As discussed by the director, the petitioner's evidence does not establish which positions were actually filled at the time the petition was filed. The petitioner's IRS Forms 941 for the first two quarters of 2009 indicate three payroll employees, one of whom is presumably the company president. The only other employees who received Forms W-2 in 2008 who are still claimed to be with the company are the shipping and handling department manager and the marketing coordinator. The record shows that the company president earned [REDACTED] in 2007 and [REDACTED] in 2008 so it is reasonable to conclude that he continued to earn approximately [REDACTED] per quarter. Given that the total wages paid during the first six months of 2009 was less than [REDACTED] it does not appear that both the shipping and handling department manager and marketing coordinator are full-time employees as claimed by the petitioner.

The petitioner has submitted evidence that [REDACTED] the secretary and sales assistant earned [REDACTED] in 1099 payments in 2008. Based on the information submitted on appeal, however, she was paid only [REDACTED] for the first six months of 2009 and also appears to be working on a less than full-time basis.

The record contains no evidence of any payments to [REDACTED] who is claimed to be employed in the position of storage manager. Finally, while counsel claims on appeal that the petitioner "pays its key, professional and executive staff on a W-2 basis," the petitioner has not submitted any evidence of salary and wage payments made to Steven Smith, its claimed "Director of Sales Development." The evidence submitted on appeal includes a photocopy of a single check in the amount of [REDACTED] issued to [REDACTED] on April 28, 2009. The petitioner has not provided evidence to support its claim that this individual is employed as the full-time Director of Sales Development for the U.S. company. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Therefore, based on the evidence submitted, it appears that the petitioner employs a president, a director of shipping and handling, a marketing coordinator and a sales assistant/secretary, and uses the services of several individuals and companies as sales agents. Of these workers, the petitioner indicates that the beneficiary would supervise the director of shipping and handling, the marketing coordinator, the sales assistant/secretary and sales agents. For the reasons discussed above, it is unclear based on the evidence submitted whether these employees work on a full-time basis.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other

employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

While two of the beneficiary's claimed subordinates are identified as department directors, the petitioner has not established that the company actually employs the individual who allegedly reports to the director of shipping and handling. Nor has the petitioner established that the director of the sales department actually works for the company in the claimed full-time supervisory capacity. The other employees are not claimed to be working in a supervisory capacity or otherwise engaged in managerial duties.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. The petitioner claims that its sales and marketing positions require bachelor's degrees, but it has not established that such a degree is actually necessary to perform the duties of a sales employee, nor has it provided evidence that any of its employees actually possess such degrees. Thus, the petitioner has not shown that the beneficiary's proposed subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner provide a detailed job description that identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function.

While the petitioner's description of the beneficiary's duties indicates that he will be responsible for the company's sales and marketing operations, the petitioner's broad assertions fails to clearly articulate whether or how the beneficiary qualifies as a function manager. As discussed above, the petitioner's vague job description fails to document that the beneficiary's actual duties will be in a managerial capacity. Further, as discussed further below, the petitioner has not documented the existence of direct or contracted employees who would perform a number of non-qualifying duties associated with the day-to-day operations of the petitioner's business.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

While the AAO does not doubt that the beneficiary will have authority to make or recommend decisions with respect to the sales and marketing operations of the U.S. company as vice president, the record does not establish that he will be primarily concerned with directing the management or establishing goals for the organization as a whole or for this component of the organization.

Counsel correctly asserts on appeal that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner operates a [REDACTED] It has established that it employs a president, a director of shipping and handling, a marketing coordinator and a sales assistant/secretary, and documents its use of sales agents who work on commission. The evidence submitted does not support the petitioner's claims that the payroll employees were working on a full-time basis at the time the petition was filed, and does not demonstrate how the marketing coordinator and sales assistant would relieve the beneficiary from performing non-qualifying duties associated with his broad sales and marketing responsibilities. Although the petitioner is an importer occupying a 6,000 square foot warehouse, and also claims to be engaged in the inspection, assembly, repair, and customization of musical instruments received in its warehouse, the petitioner has neither identified nor documented any employees or contractors who perform the day-to-day work in its warehouse and assembly/repair shop.

Based on the lack of staff available to perform such tasks, the record does not establish that the petitioner has a reasonable need for a vice president to perform primarily managerial or executive duties. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of

reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

The AAO acknowledges the petitioner's claim that the foreign entity wishes to transfer an experienced employee to its new subsidiary and eventually promote him to president of the company. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Based on the foregoing discussion, the petitioner has not submitted evidence on appeal to overcome the director's determination. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, a remaining issue in this matter is whether the petitioner established that the U.S. and foreign entities have a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(I).

The petitioner indicates that the U.S. company became a wholly-owned subsidiary of the beneficiary's foreign employer by virtue of the foreign entity's acquisition of all 200 shares of the petitioner's stock in exchange for an initial contribution of \$130,000. In support of this claim, the petitioner has submitted: (1) a copy of the petitioner's certificate of incorporation indicating that the company is authorized to issue 200 shares of common stock; (2) a copy of the petitioner's stock certificate #5 identifying [REDACTED] as the owner of two hundred shares of stock as of April 17, 2009; (3) a [REDACTED] the petitioner's receipt of three wire transfers totaling \$130,000 on April 21, 2009 from [REDACTED]

The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the

distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The petitioner's submission of a single stock certificate (#5) is insufficient to establish that the foreign entity actually acquired the U.S. entity as its wholly-owned subsidiary. The petitioner has not submitted evidence of the cancellation of stock certificates #1 through 4, a copy of the company's stock transfer ledger, or copies of any agreements related to the purchase of the stock. Moreover, while the petitioner has submitted evidence of the petitioner's receipt of \$130,000 at the time of stock purchase, the evidence submitted indicates that the monies were transferred by three individuals, rather than by the foreign entity. The petitioner submitted no explanation regarding these individuals or their connection to the foreign entity, if any, and the AAO cannot conclude that the three individual wire transfers represent the foreign entity's payment for the acquired stock. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petition is denied and the appeal is dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683 (9th Cir. 2003).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.